

Entry into Force of the New European Neighbourhood Policy and Negotiation of “Deep and Comprehensive” Free Trade Areas: A European Neighbourhood Policy Running at Different Speeds

Erwan Lannon

Professor
Ghent University and College of Europe

The year 2014 was a special one for Euro-Mediterranean relations, insofar as it was the first year of implementation of the 2014-2020 Multiannual Financial Framework (MFF). The European Neighbourhood and Partnership Instrument (ENPI), which served as the legal basis for financial cooperation for all countries covered by the European Neighbourhood Policy (ENP) and Russia from 2007 to 2013, has been replaced by a new European Neighbourhood Instrument (ENI).

At the same time, the EU proposed negotiations concerning Deep and Comprehensive Free Trade Areas (DCFTA), which are part of the revision of the ENP begun in 2011 – but that were also presented/put forth as a response to the Arab Spring – to Morocco, Egypt, Jordan and Tunisia. These negotiations constitute a second essential element of the economic and financial Euro-Mediterranean relations. They began with Morocco and are in an exploratory stage with the three other partners.

The 2014-2020 Multiannual Financial Framework: Europe in the World and the European Neighbourhood Instrument

It was in February 2013 that the European Council reached a political agreement on the “maximum total

figure for expenditure for EU 28 for the period 2014-2020 is €959,988 million in appropriations for commitments, representing 1.00% of EU Gross National Income.”¹ Under Heading 4, “Global Europe” (58,704 million euros in commitment appropriations), the European Council underscored that the financing instruments should support the following goals: “support the objectives of promoting EU values abroad, projecting EU policies in support of addressing major global challenges, increasing the impact of EU development cooperation, investing in the long-term prosperity and stability of the EU’s Neighbourhood, supporting the process of EU enlargement, enhancing European solidarity following natural or man-made disasters, improving crisis prevention and resolution and combating climate change.” It also specified that “Where appropriate and subject to objective criteria, support to partners will be adapted to their development situation and commitment and progress with regard to human rights, democracy, the rule of law and good governance.”²

These conclusions are particularly important. First of all, it confirms that the “long-term prosperity and stability of the EU’s Neighbourhood” is a priority of foreign action for the EU as a whole, and moreover, the principles of differentiation and enhanced incentive conditionality (“more for more”) affect not only the ENP but the ensemble of foreign action.

In parallel to negotiations on the 2014-2020 MFF, discussions on the main sectoral policies were likewise held as part of ordinary legislative procedure. With the ENPI expiring on 31 December 2013, the

¹ EUCO 37/13, Point 6, p. 3 (for more information, see Bibliography).

² EUCO 37/13, Point 94, p. 38.

The “long-term prosperity and stability of the EU’s Neighbourhood” is a priority of foreign action for the EU as a whole, and moreover, the principles of differentiation and enhanced incentive conditionality affect not only the ENP but the ensemble of foreign action

ENI was to replace it as of 1 January 2014, but discussion with the European Parliament has delayed its publication in the Official Journal of the European Union (OJEU) by several months.

The European Neighbourhood Instrument: Stepping Up Differentiation, Conditionality and the Role of the European Parliament

The proposal made by the European Commission concerning the “Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument” (ENI)³ identified seven key elements by which to revise the ENPI. The ENI should namely:

- i) Apply the principles of “more for more” and mutual accountability;
- ii) Streamline the programming process;
- iii) Streamline the scope of the Instrument (striking a balance between flexibility, strategic goals and key areas of cooperation);
- iv) Improve coherence among external instruments;
- v) Improve cross-border cooperation;
- vi) Promote closer links with EU internal instruments and policies;
- vii) Respond to the evolving relationship with Russia, an EU neighbour and strategic partner.

All of these elements are included in “Regulation (EU) No. 232/2014 of the European Parliament and the Council of 11 March 2014 Establishing a European Neighbourhood Instrument.”

Two essential points should be considered regarding the values and conditionality on which the ENI is based. With regard to values, the general objective of the ENI is to develop “a special relationship founded on cooperation, peace and security, mutual accountability and a shared commitment to the universal values of democracy, the rule of law and respect for human rights in accordance with the [Treaty of the European Union (TEU)]” (Art. 1 § 1 of the ENI). In contrast, the ENPI only referred to the EU values and not to “universal values” (Art. 1 § 3 of the ENPI). The issue not only of the universality but also the “indivisibility” of human rights is mentioned in the ENI (Art. 1 § 1 and 4), which is a novelty.

With regard to conditionality, it is now indicated, on the level of more specific objectives (Art. 2 § 1), that Union Support “shall focus on promoting enhanced political cooperation, deep and sustainable democracy, progressive economic integration and a strengthened partnership with societies.” The question of the implementation of enhanced conditionality (“more for more”) is discussed in Article 4, on Differentiation. It includes a series of more precise criteria to be taken into account in the allocation of financial packages, among them not only the partner country’s “commitment to and progress in implementing mutually agreed political, economic and social reform objectives” and “commitment to and progress in building deep and sustainable democracy” but also its “absorption capacity” and the “potential impact of Union support under this Regulation.” These first components are consolidated in the second paragraph, which stipulates that “the share of available resources offered to partner countries shall be adapted primarily according to their progress in building and consolidating deep and sustainable democracy and in implementing agreed political, economic and social reform objectives, in line with the incentive-based approach.” It is also stipulated that “the progress of partner countries shall be regularly assessed, in particular by means of ENP progress reports which include trends as compared to previous years” and that “support may be reconsidered in the event of serious or persistent regression.” The revision of the ENP initiated in 2011 becomes a reality here, in 2014, in operational terms. Incentive-based

³ The proposal can be found here: http://ec.europa.eu/europeaid/how/finance/documents/prop_eu_neighbourhood_instrument_reg_en.pdf

conditionality, closely linked to the principle of differentiation, is clearly reinforced.

It is also noteworthy that the ENI is entering into effect within a context where the European Parliament (EP)'s powers are strengthened on the budgetary level. This has a direct impact on aid administration. Hence the annex to the ENI Regulation entitled "Statement by the European Parliament on the suspension of assistance granted under the financial instruments." The latter indicates that the EP should be able to exercise its prerogatives in case of suspension of "assistance in cases where a beneficiary country fails to observe the basic principles enunciated in the respective instrument and notably the principles of democracy, rule of law and the respect for human rights." A second statement, i.e. "Declaration by the European Commission on the strategic dialogue with the European Parliament" allows the Commission to "conduct a strategic dialogue with the European Parliament prior to the programming of the Regulation" establishing the ENI. This dialogue shall regard the "indicative allocations foreseen per country/region, and, within a country/region, priorities, possible results and indicative allocations foreseen per priority for geographic programmes, as well as the choice of assistance modalities." It is further stated that the "European Commission will take into account the position expressed by the European Parliament on the matter." In addition, such dialogue shall also take place "in preparing the mid-term review and before any substantial revision of the programming documents during the period of validity of this Regulation." The ENP could thus become politicised, with all of the implications that would entail, but the EP only has the power to express its opinion, even if political pressure is always effective. Let us hope above all that that debate will be transparent.

Insofar as the financial envelope and its breakdown, Article 17 states that "for the period from 2014 to 2020" it will be "EUR 15,432,634,000 at current prices." Annex II, under "Priorities for Union support under this Regulation" provides the following indicative breakdown: "bilateral programmes: up to 80%; multi-country programmes: up to 35%," and "cross-

border cooperation: up to 5%."⁴ There is thus significant flexibility and this could strengthen differentiation even more.

Negotiation of Deep and Comprehensive Free Trade Areas (DCFTA)

It was in June 2011 that the Foreign Affairs Council invited the European Commission to "submit recommendations for negotiating directives for DCFTAs with selected Southern Mediterranean partners"⁵ insofar as initiatives "aimed at enhancing trade and investment relations with partners engaged in democratic and economic reforms."⁶ In December 2011, The European Council "authorised the Commission to open bilateral negotiations with Egypt, Jordan, Morocco and Tunisia, with a view to establishing 'deep and comprehensive' free trade areas, as part of the existing Euro-Mediterranean association agreements with those countries."⁷ These Mediterranean Partner Countries (MPCs) were selected because, in addition to their own political will, they are also participating in the Agadir Process, they concluded their Euro-Mediterranean Association Agreements (EMAAs) relatively early (Tunisia and Morocco in particular) and three of them have advanced status or special partnerships with the EU. They are also engaged in economic and political reform, whether as part of violent transition processes of a revolutionary nature (Egypt and Tunisia) or more pacific reform processes, in particular constitutional reform (Morocco and Jordan), although the fact remains that the entire region has been affected by the wave of protest that began in southern Tunisia.

This enhanced integration essentially consists, for the time being, in enhancing and completing existing EMAAs. The latter continue to serve as the frame of reference because they already cover:

- i) Liberalisation of industrial products under specific tariff dismantling schedules spanning 12 years on average;

⁴ Article 17 and Annex II, respectively, Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0232>.

⁵ 2008/0095(COD) - 20/06/2011 Debate in Council - Legislative summary <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1157372&l=en&t=E>.

⁶ Point 5, "European Neighbourhood Policy review", http://europa.eu/rapid/press-release_PRES-11-181_en.htm.

⁷ Press Release, 3136th Council meeting - Foreign Affairs & Trade, Geneva, 14 December 2011, European Council - PRES/11/498, 14/12/2011, http://europa.eu/rapid/press-release_PRES-11-498_en.htm.

- ii) The principle of liberalisation of services and capital through general clauses to be complemented by bilateral sectoral agreements or included in the DCFTAs;
- iii) Liberalisation of trade in agricultural products (which is mentioned in a clause on negotiation meetings and takes shape through the conclusion of bilateral agricultural agreements annexed to the EMAAs);

It is thus not yet a question of negotiating a new generation of agreements as such, but the issue should be raised on the medium term.

The term 'comprehensive' means that the liberalisation foreseen in the EMAAs should be finalised insofar as (processed) agricultural products and services

To gain a thorough understanding of this qualitative jump ahead, we must delve into the notions of "‘deep’ and ‘comprehensive’ free trade." The term 'comprehensive' means that the liberalisation foreseen in the EMAAs should be finalised insofar as (processed) agricultural products and services. According to Article XXIV of the General Agreement on Tariffs and Trade (GATT), in order to be compatible with multi-lateral regulations, a free trade area should cover "substantially all the trade between the constituent territories in products originating in such territories."⁸ The term 'deep' means that integration will go beyond tariff liberalisation for industrial and agricultural goods and services to focus on the question of non-tariff trade obstacles. The aim is to reach convergence in regulations and definitively in trade. This also entails significant legislative alignment by the MPCs with the EU acquis. ENP Action Plans are to play a key role in this regard. In any case, Partners must identify the key sectors for regulatory convergence and legislative alignment. Insofar as the state of negotiations, Morocco serves as a reference for the South because its negotiations with the EU officially began in late April 2013.

The term 'deep' means that integration will go beyond tariff liberalisation for industrial and agricultural goods and services to focus on the question of non-tariff trade obstacles

They have focussed primarily on services and public markets, competition law and intellectual property rights. Jordan seems to be the next in line, since the process preliminary to launching negotiations is quite advanced, several meetings having already taken place. With regard to Tunisia, the preliminary process began in 2012 and focuses on the spheres of services and agricultural products. Exploratory discussions were launched with Egypt in June 2013 but, for the moment, it seems the latter are at a standstill. Let us recall that on the level of Association Agreements including a DCFTA with Eastern Neighbours, Georgia and Moldavia signed in November 2013, whereas Ukraine signed the political facet in March 2014 and will enjoy unilateral trade concessions.

The conclusion is clear: the implementation of the ENI and progress in DCFTA negotiations will increase differentiations between Partners and we may witness a progressive politicisation of financial cooperation, given the increased role of the EP on budgetary matters.

Countries such as Syria and Libya, which have always been special cases in Euro-Mediterranean relations, are greatly marginalised today. Algeria seems frozen after the presidential elections, whereas Lebanon remains at the mercy of the aggravated security situation in Syria. Egypt and Jordan, two countries more involved in the ENP, are also facing considerable challenges. Only Morocco and Tunisia seem to be undertaking this second stage of the ENP with greater serenity. It would therefore be wise to ensure the reactivation and development of regional Euro-Mediterranean cooperation. An excess of bilateralism and concentration on the more advanced countries could, in fact, lead to a fragmentation of rapprochement with European, to the detriment of regional Euro-Mediterranean integration and

⁸ GATT: Paragraph 8 (a)(i), Article XXIV, World Trade Organization, www.wto.org/english/tratop_e/region_e/regatt_e.htm.

The implementation of the ENI and progress in DCFTA negotiations will increase differentiations between Partners and we may witness a progressive politicisation of financial cooperation, given the increased role of the EP on budgetary matters

leave out the populations precisely aspiring to greater freedom and prosperity, while consolidating an ENP running at different speeds. It remains to be seen what the impact of a possible politicisation of financial cooperation would be, or whether the Members of the European Parliament will manage to go beyond traditional political rifts and the exploitation of EU aid to purely national political ends.

Bibliography

- EUROPEAN COUNCIL. *Conclusions of 7/8 February 2013 concerning the Multiannual Financial Framework*, EUCO 37/13, Point 94, www.european-council.europa.eu/council-meetings/conclusions.
- COUNCIL OF THE EUROPEAN UNION. *Council Conclusions on the European Neighbourhood Policy*, 3101st Council Meeting: Foreign Affairs. Luxembourg, 20 June 2011, www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/122937.pdf.
- EUROPEAN COMMISSION. "Proposal for a Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument," Brussels, 7 December 2011, COM(2011) 0839 final, 2011/0405 (COD), [www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com\(2011\)0839_/com_com\(2011\)0839_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2011)0839_/com_com(2011)0839_en.pdf).
- COUNCIL OF THE EUROPEAN UNION. *Council Conclusions on the European Neighbourhood Policy*, 3136th Council Meeting: Foreign Affairs - Trade. Geneva, 14 December 2011, http://europa.eu/rapid/press-release_PRES-11-498_en.htm?locale=en.
- EUROPEAN COMMISSION, *L'Union européenne et le Maroc entament des négociations en vue de resserrer leurs liens économiques*, Press Release, Brussels, 22 April 2013, http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151043.pdf.
- EUROPEAN COMMISSION, Directorate-General for Trade (DG Trade), *Overview of the FTA and Other Trade Negotiations*, updated 31 March 2014, http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf.
- "Regulation (EU) No. 232/2014 of the European Parliament and the Council of 11 March 2014 Establishing a European Neighbourhood Instrument," Official Journal of the European Union (OJEU), L 77/27, 15 March 2014, p. 27, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0232>.
- "Regulation (EC) No. 1638/2006 of the European Parliament and the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument (ENPI) (24 October 2006)," Official Journal of the European Union (OJEU), L 310/1, 9 November 2006, p. 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1638>.